

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 651 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

HARILAL D. BRAHMAKSHTRIYA

Versus

IRISH PRABYTERIAN MISSION TRUST

Appearance:

MR KS JHAVERI for Petitioner

Mr. M.C. Bhatt for

MS DHARMISHTHA BHATT for Respondent No. 1 to 9

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 03/07/97

ORAL JUDGEMENT

1. The petitioner is the original plaintiff and respondents are the original defendants. The petitioner claims to be the tenant of I.P. Mission Trust, respondent No.1 having office at Ahmedabad since 1971 and according to him he is in possession of the Sheet No. 32, 33 bearing survey No. 256 to 262 and admeasuring 8504.1 sq.yards. According to the petitioner, the said

land was given to him by the alleged power of attorney holder of power of attorney holder - the said trust on or around 1st of October, 1971 at the annual rent of Rs.400/-. According to him, even the rent note was also executed on 5th of October, 1971. He has constructed six shops on the northern side of such a big plot being Shop Nos. 256 to 261 and he is in possession of such shops.

2. It appears that the petitioner plaintiff instituted Regular Civil Suit No. 110 of 1988 in the court of Civil Judge, Junior Division, Deesa on 9th of May, 1988 on apprehension that his possession of the entire land would be disturbed and he also claimed temporary injunction. The trial court initially granted ex parte ad interim injunction on 19th May, 1988 but after taking into consideration the reply filed by the defendants, such injunction was vacated on 14th December, 1989.

3. Being aggrieved thereby, the present petitioner preferred Civil Misc. Appeal No. 125 of 1989 in the court of District Judge, Banaskantha at Palanpur and after hearing such appeal, the lower appellate court by judgment and order dated 23rd April, 1991 dismissed the appeal and confirmed the order passed by the trial court.

4. It is thus clear that against two concurrent judgments of the courts below, the present Civil Revision Application is filed challenging non-exercise of jurisdiction by the courts below and legality and validity of the orders of the two courts below.

5. Having heard Mr. Kalpesh Jhavery, learned counsel for the petitioner claiming to be the tenant of the entire land and having heard Mr. M.C. Bhatt, learned counsel appearing for the respondents, in my opinion, the interest of justice will be met if the injunction to the extent of restraining defendants from disturbing the possession or otherwise of the plaintiff over the aforesaid six shops is granted with a right of access to the plaintiff and/or his customers to reach the said shops. Both the courts have held that the plaintiff has, prima facie, failed to establish even tittle of title over the entire suit land and has failed to establish the prima facie case as required under Order 39 Rule (1) of the Code of Civil Procedure. Even if, his possession, vis-a-vis the six shops is to be protected, the defendant which is a public trust, cannot be deprived of the right vis-a-vis balance land and undoubtedly greater hardships will be caused to the defendants if injunction of such a wide nature is issued against the defendants.

6. In view of the aforesaid, this court is of the view that the ends of justice will be met, if the respondents defendants are restrained by way of temporary injunction from disturbing the possession of the plaintiff over the aforesaid six shops and from right of access and ingress available to the plaintiff and/or his customers, agents and servants to reach the shops from the north side of the plot. However, in case of any difficulty, if no way is available from the north, parties will be at liberty to move the court. It is also reported to the court that suit is already in progress and the evidence of the plaintiff is already commenced. In that view of the matter, it is desired and directed that the defendants would maintain status quo of the rest of the land so as not to put up any construction thereof.

7. In the result, Civil Revision Application partially succeeds to the aforesaid extent only. Rule is partially made absolute. There shall be no order as to costs. The hearing of the suit is expedited.

8. The question of granting permanent injunction or not, in favour of the plaintiff, shall be decided by the trial court on merits without being influenced by any of the observations made in this judgment.

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